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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7 PAUL MCREARY,

8 *Petitioner,*

9 vs.

10 RENE E BAKER, *et al.*,

11 *Respondents.*
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3:14-cv-00055-LRH-VPC

ORDER

14 Petitioner has filed a habeas petition and a notice of appeal from a state supreme court order
15 without properly commencing the action by paying the filing fee or filing a pauper application.

16 It does not appear that a dismissal without prejudice would cause a promptly filed and properly
17 commenced new action to be untimely or otherwise cause substantial prejudice.¹ The present
18 improperly-commenced action therefore will be dismissed without prejudice to the filing of a new
19 action.

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21 ¹The papers submitted along with the online dockets of the state courts reflect the following:

22 Petitioner Paul McCreary seeks to challenge a prison disciplinary decision. The hearing was held on August
23 29, 2012, and a disciplinary appeal followed. Petitioner filed a state habeas petition on February 1, 2013. Proceedings
24 on that petition continued through to a January 15, 2014, decision by the state supreme court. The remittitur likely will
issue on or about Monday, February 10, 2014. Petitioner thus has substantial time remaining in the one-year federal
limitation period within which to properly commence a new federal habeas action.

25 Moreover, to the extent that petitioner seeks to file a notice of appeal from the state supreme court's decision,
26 he may not do that in the same proceeding as a habeas action and he further must pay a \$350.00 filing fee pursuant to the
27 provisions of the Prison Litigation Reform Act rather than the \$5.00 habeas filing fee. Petitioner should note, however,
that a federal district court does not have appellate jurisdiction over a state supreme court.

28 Petitioner at all times remains responsible for calculating applicable limitation periods and timely and properly
commencing an appropriate action in a proper forum.

1 IT THEREFORE IS ORDERED that this action shall be DISMISSED without prejudice to the
2 filing of a new petition in a new action accompanied by either the required filing fee or a properly
3 completed application to proceed *in forma pauperis*.


4 IT FURTHER IS ORDERED that a certificate of appealability is DENIED. Jurists of reason
5 would not find the dismissal of this improperly-commenced action without prejudice to be debatable
6 or wrong, as no substantial prejudice will result. See text at n.1 and n.1.

7 The Clerk of Court shall SEND petitioner two copies each of a noncapital habeas petition form
8 and a pauper form along with one copy of the instructions for the forms and of the papers submitted in
9 this action.

10 The Clerk of Court shall enter final judgment dismissing this action without prejudice.

11 DATED this 28th day of January, 2014.

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LARRY R. HICKS
UNITED STATES DISTRICT JUDGE